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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 NORMAN T. POWELL,

11 *Plaintiff,*

12 vs.

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14 JOE BRACKBILL, *et al.,*

15 *Defendants.*
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3:07-cv-00463-LRH-RAM

ORDER

17 This removed prison civil rights action comes before the Court on the plaintiff's motion (#37)
18 for an extension of time to file a notice of appeal. Plaintiff seeks to appeal this Court's order (#29)
19 entered on January 24, 2008, denying plaintiff's motion (#8) for a temporary restraining order. The
20 motion sought an order transferring plaintiff to a different institution. The Court denied the motion as
21 moot after plaintiff was transferred to a facility that he had stated on the record was one to which he
22 wished to be transferred.

23 Out of an abundance of caution, the motion to extend the time for the filing of a notice of appeal
24 will be granted. The Court is not persuaded that it should deny a *pro se* motion seeking to avoid a bar
25 to an appeal for untimeliness based upon a correctional officer's assessment of what a prisoner with the
26 plaintiff's medical condition can see with the lighting available in a cell. The officer's affidavit does
27 not address the sufficiency of the lighting in the cell vis-à-vis a prisoner with plaintiff's visual
28 impairments, and the officer in any event would not be a competent witness to address that issue.

1 Pursuant to 28 U.S.C. § 1915(a)(3), the Court certifies to the Court of Appeals that the appeal
2 is not taken in good faith. With deference to the final authority of the Court of Appeals to determine
3 its own jurisdiction, it does not appear that there is appellate jurisdiction over the appeal. A denial of
4 a temporary restraining order is not appealable. *E.g., Office of Personnel Management v. American*
5 *Federation of Government Employees*, 473 U.S. 1301, 105 S.Ct. 3467, 87 L.Ed.2d 603 (1985). The
6 Court in this instance expressly noted that a request for a temporary restraining order was the only
7 request for injunctive relief that then was before the Court. The order in no sense was intended to act,
8 nor did it act, either as a *de facto* denial of any other request for injunctive relief or as a final disposition
9 on the merits of the case. Plaintiff thus is seeking improperly to appeal a nonappealable order.

10 IT THEREFORE IS ORDERED that the plaintiff's motion (#37) for an extension of time to file
11 a notice of appeal is GRANTED, that the Clerk of Court shall file the notice of appeal submitted with
12 #37, and that the Clerk shall process the appeal. The Court notes in this regard that plaintiff has not
13 previously been granted pauper status in this removed case.

14 IT FURTHER IS ORDERED pursuant to 28 U.S.C. § 1915(a)(3) and in anticipation of an
15 application to appeal *in forma pauperis*, that the Court certifies to the Court of Appeals that the appeal
16 is not taken in good faith.

17 IT FURTHER IS ORDERED, so that the certification herein shall be clearly marked on the
18 docket for review by the Court of Appeals, that the Clerk of Court shall docket this order on the docket
19 sheet as an order that both grants the motion for an extension of time to file a notice of appeal and
20 further certifies to the Court of Appeals that the appeal is not taken in good faith.

21 DATED this 27th day of March, 2008.



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25 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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